

KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
June 27, 2017

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua'i was called to order at 8:30 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Ms. Donna Apisa
Mr. Roy Ho
Mr. Sean Mahoney

The following staff members were present: Planning Department – Chance Bukoski; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Chair Ho called the meeting to order at 8:30 a.m.

ROLL CALL

Mr. Ho: Mr. Bukoski, could you call the roll, please?

Staff Planner Chance Bukoski: Sure. Chair Ho.

Mr. Ho: Here.

Mr. Bukoski: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Bukoski: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Bukoski: Three (3) present.

APPROVAL OF AGENDA

Mr. Bukoski: Moving on to Item C, Approval of Agenda.

Ms. Apisa: I move we approve.

Mr. Mahoney: Second.

Mr. Ho: Agenda has been approved. All in favor? (Unanimous voice vote) Motion carries 3:0. Okay.

MINUTES of the meeting(s) of the Subdivision Committee

Meeting of May 9, 2017

Mr. Bukoski: Moving on to Item D, Minutes of the Meetings of the Subdivision Committee. The first item for D is May 9, 2017.

Ms. Apisa: Move we approve.

Mr. Mahoney: Second.

Mr. Ho: Motion has been made and seconded for the minutes. All in favor? (Unanimous voice vote) Motion carries 3:0.

Mr. Bukoski: Thank you, Chair.

Meeting of May 23, 2017

Mr. Bukoski: Second item on Item D is May 23, 2017.

Mr. Mahoney: Chair, move to approve the minutes for May 23, 2017.

Mr. Ho: I need a second.

Ms. Apisa: Second. Sorry.

Mr. Ho: Moved and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0. Thank you, Chair.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Bukoski: Moving on to Item E, Receipt of Items for the Record. We have none.

HEARINGS AND PUBLIC COMMENT

Mr. Bukoski: Moving forward, Item F, Hearings and Public Comment. Do we have any public—

Mr. Ho: On the agenda items mentioned today or published, we will welcome any testimony now on the agenda items. Seeing none.

Unidentified Speaker: I do have some comments that I would like to submit (inaudible).

Mr. Ho: Please come up.

Unidentified Speaker: (Inaudible)

Deputy County Attorney Jodi Higuchi Sayegusa: Right. So at this point, it is just opening it up to the public, if anyone wanted to comment, before any item on the subdivision matter is called, for anything; wanted to come and testify. But the matter will be called and then at that point, the parties may be able to share any testimony. Thanks.

UNFINISHED BUSINESS (For Action)

Mr. Ho: Unfinished Business. Do we have any?

Mr. Bukoski: None.

NEW BUSINESS (For Action)

Tentative Subdivision Map Approval

Subdivision Application No. S-2017-7; *Garrett Scales*; Proposed 3-lot subdivision; TMK: (4) 2-3-001:012; Kōloa, Kauaʻi

Mr. Bukoski: Moving on to Item I, New Business, Tentative Subdivision Map Approval. First item, Subdivision Application No. S-2017-7, Garrett Scales, proposed 3-lot subdivision, TMK: (4) 2-3-001:012, Kōloa, Kauaʻi.

Mr. Bukoski read the Subdivision Report for the record (on file with the Planning Department).

Mr. Bukoski: We have received all various government comments and we, the Planning Department, are recommending tentative approval.

Mr. Ho: Is there someone here representing Garrett Scales?

Maren Arismendez: Good morning. My name is Maren Arismendez from Esaki Surveying. We prepared the application and the map for the owner.

County Attorney Mauna Kea Trask: Aloha, Honorable Chair and members of the Subdivision Committee. My name is Mauna Kea Trask and I represent the Planning Department in this matter. The reason I am here today is to give you a description of the history of this matter and kind of contextualize this process at this time. I have spoken with Ms. Arismendez and the applicants have agreed to allow me to speak first, and then hopefully we can clear this up. It is a little complex. If that's okay with you– Oh, Scales. I'm sorry. I'm not on this one. (Laughter in background)

Mr. Ho: It was...where am I now? (Laughter)

Ms. Arismendez: Scales. (Laughter)

Mr. Ho: Alright. For the Scales, we have a tentative approval recommended by Mr. Bukoski. Is that correct?

Mr. Bukoski: Correct.

Mr. Ho: Any Commissioner members have any comments for this?

Mr. Mahoney: Could we just have a brief description from the applicant on the subdivision? Is there anything you want to add to the report or anything like that?

Ms. Arismendez: No. It is just a larger parcel that can benefit from the subdivision, so the owner has decided to subdivide and create two (2) new lots.

Mr. Mahoney: Okay. And there are no objections from the Planning Department so I'm good.

Mr. Ho: Seeing none. So I need a motion for approval.

Mr. Mahoney: Chair, move to approve tentative subdivision approval for Application No. S-2017-7, proposed 3-lot subdivision, TMK: (4) 2-3-001:012, Kōloa, Kaua'i.

Ms. Apisa: Second.

Mr. Ho: Motion is to approve tentative subdivision map. A motion has been made and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0. You have it.

Ms. Arismendez: Thank you.

Mr. Ho: Alright.

Mr. Bukoski: Thank you, Chair.

Subdivision Application No. S-2017-8; *Neil & Desiree Fagarang*; Proposed 2-lot subdivision, TMK: (4) 3-7-006:097, Kōloa, Kaua'i

Mr. Bukoski: Moving on to Item b., Subdivision Application No. S-2017-8, Neil and Desiree Fagarang, proposed 2-lot subdivision, TMK: (4) 3-7-006:097, Kōloa, Kauaʻi.

Mr. Bukoski read the Subdivision Report for the record (on file with the Planning Department).

Mr. Bukoski: We have received all various government comments and we are recommending tentative approval.

Mr. Ho: Please, again.

Ms. Arismendez: Good morning. Maren Arismendez, Esaki Surveying. I'm here on behalf of the owners.

Mr. Ho: This is for a 2-lot subdivision approval?

Mr. Bukoski: Correct, tentative approval.

Mr. Ho: And you are recommending it?

Mr. Bukoski: Yes, Chair.

Mr. Ho: Have you read the conditions for the approval? Any objections?

Ms. Arismendez: No. Most of the improvements are already there.

Mr. Ho: Any discussion from our members?

Mr. Mahoney: No, no questions.

Ms. Apisa: I move we approve as recommended by the Planning Department.

Mr. Mahoney: Second.

Mr. Ho: Motion has been made and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0. You have it.

Ms. Arismendez: Thank you.

Mr. Bukoski: Thank you, Chair.

Subdivision Application No. S-2017-12; Jack Philips; Proposed 3-lot subdivision; TMK: (4) 2-3-007:001, Kalāheo, Kauaʻi

Mr. Bukoski: Moving on to Item c., Subdivision Application No. S-2017-12, Jack Philips, proposed 3-lot subdivision, TMK: (4) 2-3-007:001, Kalāheo, Kauaʻi.

Mr. Bukoski read the Subdivision Report for the record (on file with the Planning Department).

Mr. Bukoski: We haven't received any comments from the various government agencies; however, the Planning Department is recommending tentative approval. I would like to note that the conditions that are being established in the Subdivision Report is a basic requirement for all county agencies that the applicant shall comply with when the Planning Department receives all the comments from the respective agencies.

Mr. Ho: Do we have representatives for Jack Philips?

Mr. Trask: Aloha, again. For the record, Mauna Kea Trask, County Attorney. I am on the right one right now. Again, like I stated earlier, I would like to just discuss the history of this matter, briefly, so that the Subdivision Committee can kind of appreciate why I am here today, why the Department is involved in this differently than the previous requests. If you look at the subdivision map provided for you, attached, we are dealing with...okay, I am just going to go into it. Alright.

In the early twentieth century, the Territory of Hawai'i granted to Johanna Gardner, Land Patent No. 7313, Lot 151; that is the larger lot that you are looking at right now. That is the outer boundary of the three (3) lots – 001, 002, and 003, respectively – contained therein. Now, that Lot 151, pursuant to the Territorial Land Patent, comprises the entire area of these properties; a total of 21.95 acres. Now within that land patent, contained language specifically "accepting and reserving rights of way 6 feet wide for lateral ditches 1.a. and 2, respectively, for a total area of 0.22 of an acre within the lot." Those are those two (2) lines. The two (2) lines delineate the borders between 001, 002, and 003 – going from left to right – on the map. Therefore, the land patent expressly provided the net area of the lot was 21.73 acres. So what you are dealing with here, as will become clear, is the de facto subdivision issue. You dealt with this in the past. The Planning Department has dealt with this from the latter quarter of the twentieth century up until now. Sometime later, the entire property was acquired by the Momohara Trust from Ms. Gardner. Going back to April 14, 1992, the Momohara's submitted a subdivision application with the Planning Department under Subdivision App. No. S-92-72 for the subdivision of Lot 151 of Kalāheo Homesteads. That subdivision application requested subdivision into nine (9) lots; Lots 151A to 151I, respectively. On June 2, 1992, the Planning Department recommended tentative approval of the subdivision application subject to standard conditions. On June 9, 1992, the Planning Commission granted tentative subdivision approval and indicated that final approval would be granted subject to twelve (12) stated conditions. This is all in the record of the Planning Department at this time. On April 11, 1994, a representative of the Momohara Trust asked the Planning Department for an extension of time to file the final subdivision map. This request was granted and it is a normal process as you know. On May 25, 2000, the Momohara Trust sent a letter to the Planning Department requesting a review of the metes and bounds description for the property and the ditches affecting the subject property, and also to determine if the property should be recognized as separate lots, irrespective of the pending subdivision application, or at that time, the older subdivision application because this was six (6) years after the extension was granted. On July 19, 2000, the Planning Department informed the Momohara Trust via letter signed by the Planning Director at the time that it is the Department's

practice to recognize ditch right-of-ways as encumbrances similar to easements, but that they defer to a licensed surveyor for such determination, and if a determination is made, that they comprise separate lots that the Department...okay, I'm sorry. If that surveyor makes the determination that they comprise separate lots, the Department would uphold that determination. On February 14, 2001...subsequent to that, the Licensed Surveyor made the survey metes and bounds and made such a determination, and that was submitted to the Planning Department. On February 14, 2001, the Planning Department, based upon the determination of the Licensed Surveyor, indicated to the Momohara Trust via letter that the subject property identified as Tax Map Key Nos. 2-3-007 Parcels 001, 002, and 003 – so those parcels that you see right now do have existing TMKs – they were recognized as separate lots and that such determinations, a de facto subdivision, had been made the County Planning Department in the past. These determinations remain in good faith because the unique and convoluted history of property in Hawai'i and Hawai'i specifically; however, over time clarity has provided the courts...by the courts and the County seeks to work in good faith with the landowners who own the property that have been subject to this de facto subdivision determination. So right now, what you are looking at has actually already been done, in a certain effect. Mid-2016 – so last year – and after that determination was made in 2001, the Momohara's sold those lots. As you know, the Momohara's are not here today; the Philips' are here, as is Mr. Atkins. In 2001, 2002, and 2009, the various lots were sold, so the Momohara's no longer own that property. The Philips'...I believe they have a Trust that owns the middle lot and the furthest lot from the Ihu Road, and Mr. Atkins owns Lot 001 adjacent to Ihu Road. Lot 001 has been CPR'd, which was approved by the County, and Mr. Atkins has a house on it and there is another owner of the other CPR. The middle lot has four (4) CPRs on it, approved by the County already. And all of the easements you see that have been drawn out and...the utility easements, the access easements, everything have been drawn out and recorded and approved by the County and they are in the bureau right now as existing easements. So everything you see has been done; this is not proposed. Furthermore, like I said, access is provided to Parcels 001, 002, and 003, respectively. There are a total of eight (8) existing active water meters approved and installed by the County and there are water lines leading from the meters to each of the eight (8) CPR units and building sites. Specifically, two (2) serve Parcel 001, four (4) and associate lines serve Parcel 002, and two (2) water meters and associate water lines serve Parcel 003. Parcel 003 has not yet been CPR'd, but it is the Philips' intention to CPR it. As a condition of obtaining said eight (8) water meters, the owners were required by the County to – and did at their own expense – install 1,000 feet of 8-inch water line on Puu Road mauka of the Ihu Road properties. They are all served by utility facilities approved by KIUC and KIUC has approved and completed the installation of the underground utilities for CPRs 1 and 2. There is a structure, like I said, on Parcel 001, Unit 2. Mr. Atkins has constructed a residence in compliance with all County requirements on or about 2009. What happened was, in 2016, the owner of Parcel 001, Unit 1, which is Mr. Atkins' neighbor, entered into a contract to sell that property to a third party. The buyer checked with the Planning Department concerning the right to build a home thereon and the Planning Department advised the buyer that the buyer would need to obtain permission from all of the owners of the Ihu Road properties – that is Parcels 001, 002, and 003, not just Parcel 001 – contending that the Ihu Road properties comprise of a single parcel of land and that the ditches were mere easements and not portions of separate parcels owned in fee simple. Obviously, the owners, all owners of all the respective lots, were taken aback because under their understanding, which is substantiated by Planning Department's record – and I have reviewed it – the Planning

Department had agreed to the de facto subdivision back in the early 2000s, so this led to some disagreement.

Currently, I am before you here today representing the Planning Department as a method of compromise. The parties have discussed this. Currently we are pushing back and forth drafts of a settlement agreement in order to avoid litigation in this case and to settle the dispute between the owners and the County regarding the Ihu Road properties – all these properties before you. So that has not been finalized, but the concept is agreed upon. The Philips' live on the mainland so they travel back and forth, so they are not readily available every day. The nature of this, essentially is what we are going forward, is to...and what this rests on is recently there was a case called "R3BST" that established...in a kind of related circumstance on the east side of Kaua'i, there was this issue came up whereby someone was told there was a de facto subdivision of a large empty lot that was divided by railroad and ditch easements and they wanted to convey that separately. The Planning Department caught it at that time and said no, that is one (1) lot and we went to litigation up to the Immediate Court of Appeals of the Supreme Court of the State of Hawai'i. That case was ultimately settled by the parties agreeing in appellate court mediation to submit everything under a subdivision application and approve what they were arguing and what you couldn't agree upon. And that was because the Circuit Court had found that there was no de facto subdivisions and that was found after – in 2011 – after this was approved by the Planning Department. There is a bunch of moving parts here. It is a little confusing. So because of that, nonetheless, all the lots were approved "subdivided" by the Planning Department, not Planning Commission, for the Momohara's. Those were sold and the Philips' and Mr. Atkins have worked with the Department and got County approvals to establish all of the easements you see in a kind of way to get all the necessary approvals but not having gone through subdivision because it is a de facto subdivision at that time. Now, it is not a de facto subdivision, but in order to avoid litigation and essentially end up, we believe where we are now, anyway, after two (2), three (3) years of expensive litigation, the parties have agreed just to come here first. So essentially what we are here today to say is that in good faith and in equity, the parties are trying to formalize what has already been approved and is right, and given that in R3BST, this was caught essentially in the early 2000s when it was already approved. At this point, the Philips' are beyond that. They have been sold lots. They have approved all of the easements that otherwise would have been granted in subdivision. They have installed all of the utilities; they've got water, they got KIUC. This went through Planning Department, this went through Public Works, this went through KIUC, and this went through Water. Given all of that, both the Department and the Philips' believe that it is appropriate to settle at this time by essentially OK'ing what has already been OK'd and has already been approved. Again, at this point, the lots that...it is not just one (1) lot that we are dealing with, we are one (1) lot with six (6) different CPR units within the lot according to lines that were established by the Planning Department in the past. The Planning Department's position at this time because right now, the agreement is before the Philips' and we haven't heard back from them yet, so the owners would comply with the requirements of the Subdivision Ordinance Section 9.3.3 in submitting the subdivision application. They have done that. They need, for their own personal reasons I believe, to proceed with this whole process because this is their property, there are some sales going on for the CPR unit for Parcel 001, Unit 1. However, since the subdivision application is for the express purpose of settling a dispute between the parties by formalizing an existing de facto subdivision that was already "approved by the Department", the County will, to the extent

allowable by law, exercise its appropriate discretion and approve what it has already approved, if that makes sense. I think I am going to leave it right there. If you have any questions, I'd be happy to answer them. But simply, this was already done, but we want to do it again right via approval by you because the Commission is the one who can grant this authority, not the Department. The Department granted it in the past, but it needs to be approved by you to be legal and for them, the security and legality in order to exercise their rights as property owners, which is to sell, alienate, develop, etc. Thank you.

Mr. Mahoney: Thank you.

Mr. Ho: Questions for Mr. Mauna Kea?

Mr. Mahoney: Well, this is the most complicated one I have heard, but you explained it very well. It seems like things that were supposed to be done are done and with the approval previously granted and the applicants have done their due diligence. I don't have a problem with it.

Ms. Apisa: And the Planning Department is...

Mr. Bukoski: We concur.

Mr. Ho: Mauna Kea, you are asking us for a solution how? By granting subdivision approval?

Mr. Trask: Yes, to...I don't know how to explain this. As a metaphor, I was raised Catholic. I used to go to...infrequently I go to St. Catherine's; I went there (in) Kindergarten. When I went through Holy Communion, there was a formal process you go through; you accept sacrament and the Priest makes a hand gesture, and then you are formally accepted into the church. I'm essentially asking you to do that today. They have gone through the process like was said. In making the easements and Esaki shooting everything and it being recorded and previously approved by numerous County agencies, they have accepted the sacrament. I am asking you to make the appropriate hand gesture and approve it. Again, the Department and the County Attorney's Office hopes that this issue...there are a few of these out there; it has happened. And in good faith in the past, there was no hook or crook with this before, but the law is clearer now so these do exist. So we are hoping that we are creating a path to legality for those people who, have in good faith, relied upon various County agencies' actions in the past so we can avoid expensive litigation, we can avoid special counsel, and we can go to you – the appropriate body – to get these things approved is what I am asking.

Ms. Apisa: I am okay to make the motion. I am not really sure what the motion needs to say to give a blessing on this. (Laughter)

Mr. Ho: Who is the young lady next...she wants...you are?

Margaret Philips: My name is Margaret Philips. Together with my husband, we are co-trustees of two (2) different trusts that own Parcel 002 and Parcel 003. They were acquired at different times from Mr. Momohara in reliance on the letter that Mr. Trask described from the Planning

Director. I would like to thank Mr. Trask for his distillation of fifteen (15) years of history because, unless you were there, the whole process of this is quite complicated and, to some extent, unbelievable. I would also like to clarify that this subdivision application is described as Jack Philips. It is actually all of the owners of the Ihu Road properties; that is Mr. Atkins and his co-owner Mr. Marshall MacCready, the Kalāheo Macadamia Preservation Land Trust which is a hui for employees and friends, and the Philips Family Living Trust which is the owner of Parcel 003 and that is for estate planning purposes for family members. We have submitted to the County – and I think Mr. Mauna Kea has it front of him – evidence of all the expenditures that we made on developing the infrastructure and improving and the legal aspects of putting the infrastructure together, and we have documented over \$3 million spent, collectively, by the owners in terms of Mr. Atkins building his house, in terms of putting in the water line, the utilities, the water meters, preparing a CPR, etc. As Mr. Trask says, we have had extensive negotiations with the County over the last year. I mean, it has been twelve (12) months and I think...I would like to characterize the matter before the Committee today as a formal ratification of the 3-lot de facto subdivision. It will make peace between the County and the owners, and it will avoid any future ambiguity and uncertainty and potential litigation. It is also being presented to you on an expedited basis due to the twelve (12) months that we spent in limbo. I have one (1) clarification – and Mr. Trask mentioned it briefly – that Parcels 002 and 003 are not landlocked. There are easements on record for utilities and access. There is also a County-approved roadway plan to be built to County standards; a common entranceway of which feed individual driveways to each of the dwelling sites in the CPR and on Parcel 002 and Parcel 003. I have copies of the maps here showing all of the easements and all of the plans for the individual driveways that feed off the County-approved common roadway element which is the subject of an active permit and the work will start as soon as we get this subdivision issue settled. So I am speaking on behalf of the Trust that own Parcels 002 and 003. I am also representing Mr. Fred Atkins and Marshall MacCready, who own Parcel 001 – Mr. Atkins is in the audience here – that they are fully in support of this subdivision application. So on behalf of all of those owners, we recommend that the de facto subdivision on Ihu Road be formalized according to the subdivision map that has been expertly drawn up by Esaki Surveying. Thank you. Mahalo.

Mr. Ho: I think Mr. Bukoski has a comment. There are further conditions that are not published yet?

Mr. Bukoski: Because of this subdivision being expedited substantially, we have not received all of the various government comments, right, but the applicant shall comply with those requirements when received. If granted tentative approval from the Commission, the Planning Department will be sending out the conditions, when received, immediately to the applicant. Also, I would just like to note as well, tentative approval does not mean it is granted final, right? So with conditions being given from the various government agencies, the applicants have a year to comply with those requirements and then also if that year has expired, then an extension, of course, in the subdivision process, but until final approval and recorded with the Bureau of Conveyances, then that is when the subdivision shall be finalized, but we concur with Mauna Kea's–

Mr. Ho: Have you received any documentation from Mr. Bukoski regarding those amendments that might be attached?

Ms. Philips: We received, late yesterday afternoon, a copy of the subdivision report from Esaki Surveying's Office, which is why I spoke to the County-approved common roadway element that is already the subject of an active construction permit. We do believe that the subdivision should be approved based on the conditions that existed for the last fifteen (15) years and not the imposition of any new conditions that might be the thinking of the Planning Department today because that would kind of upset the settlement that we believe we have made with the County to make peace and move forward.

Mr. Ho: That seems different from what—

Mr. Bukoski: Since Mauna Kea has done extensive research and documentation of this matter, I would concur with what Mauna Kea...of leaving the de facto subdivision and the agency comments on previously granted (inaudible) subdivision which would ultimately be the applicant's favored desire.

Mr. Ho: Let's see now. Your recommendation is for tentative approval?

Mr. Bukoski: Correct.

Mr. Mahoney: Yeah, that is what I wanted to clarify. Is this for tentative approval?

Mr. Bukoski: Correct.

Mr. Mahoney: Yeah.

Mr. Bukoski: In that timeframe between the tentative to final approval, the conditions from the various government agencies and also...can be combed, per se, in that process.

Mr. Ho: Okay.

Mr. Trask: Again, like I said before, the intent of the parties is to work together to, like Ms. Philips appropriately said, to ratify what has already been required. So at this point, the only thing is that...like Ms. Philips said, she was engaged in this discussion, and Mr. Atkins and Mr. MacCready were engaged in this discussion, for a year with the Planning Department. It took me another three (3) months to figure all this stuff out after bothering Mr. Bukoski to get files from '92 that they had to find. My only concern at this point is...obviously the subdivision report in the packet is not going to go to the respective agencies with the entire history for them to go through and so with the understanding that...I don't anticipate there will be any differences because they have complied with all of the requirements already and it would be suspect for me...for Public Works to not require them to get a correct sized roadway, they got the correct sized roadway, when they got the easement, it should be all the same. With the understanding that when we come up for a final, realizing, remembering the intent of this is to ratify what has

already been required and approved, that we can formalize that at that time. I just want to make sure that the spirit of this and the right thing is done. I mean, we are here to do the right thing.

Mr. Ho: Commissioners, any questions?

Mr. Apisa: I see it as an analogy. Your analogy was good, but I see it as a couple living together and having the three (3) children...never getting married, but having the three (3) children and now subsequent grandchildren with the CPR so it is time to bless the marriage. (Laughter)

Mr. Trask: Yeah, exactly.

Fred Atkins: Can I make testimony?

Mr. Ho: Sir, you are?

Mr. Atkins: My name is Fred Atkins. I just want to give you a little feedback from somebody that didn't know all the different things that went on here when I bought the property, but I did do a lot of due diligence. We were buying a one (1) unit, 6-acre, approximately, CPR and it had the potential to be CPR'd, so my friend and I looked at it and we bought it and we decided to CPR it. We went through all of the State fields. We did everything by the book. The County signed off on our individual 2-unit CPR. I built a home. I got the property at a good price after the market turned. I was an owner-builder. I put sweat equity into this thing and everything was fine until my partner decided he wanted to sell the home. It is a beautiful lot. It went into escrow in seven (7) days almost a year ago and this is when this whole problem came up. This could have happened to anyone sitting on the table before me or anybody sitting behind me; you just get thrown into this. What went wrong? We go to the County, it is all approved like Mr. Trask has told you guys, but we are in this quagmire and I really feel sorry for the people that want to buy this lot. So when we talk about expediting, it is really...I could sit there for a while, but I really feel bad for my partner that has been hung up for a year and the people that want to buy this, so there is a real reason to expedite it. You know, the Planning Department, they make changes over the years in their regulations when it comes to a CPR subdivision, a regular subdivision, anything, and I don't think it would be fair for us – I have been in this home for seven (7) years – to have something come up over all these departments that well, you know, two (2) years ago we decided we wanted to make this wider or we wanted street lamps or we wanted something else, and now it's an opportunity for us to throw it on us seven (7) years later. So really, if you are going to have the departments look at it, the language should be that it looks at it as it was approved as a subdivision. If we missed something that was required of us through any of the departments, then that should be brought up to...you know, corrected before we get final approval. But to open it up, to me, is a big can of worms. We have been really good with this process. We went through all of the proper things. It was very agonizing; how this process took a year just to get to this point, but I can't thank Mr. Trask enough for doing the research that he did. I mean, he even told me he learned a lot of Hawaiian history with this. I mean, there were pages and volumes and going back to where things were written in hand about this property transfer. So I just appreciate you taking the time to hear our case, but I wanted to put a little personal thing into it so you understand from somebody that bought one (1) parcel, thought he bought a parcel, going back and have to get someone's signature for six (6) other people that...I

don't even know who they are because this land hasn't been sold to those individual partners, was a real shock to me. I appreciate your taking the time, but I really hope that it is worded correctly so it can be expedited; that these departments are looking at it when it was actually approved and not putting anything new in the future. Thank you.

Mr. Ho: Commissioners, what is your pleasure?

Ms. Apisa: Well, I can hear your frustration and I appreciate that, but I don't think you have any argument here and I am very supportive of it. It's just a question...I guess I would look to someone with more...maybe Mr. Trask. I don't know how to word the motion to make sure that it is clean and that there is...you are not back here again.

Deputy County Attorney Jodi Higuchi Sayegusa: This is sort of an unusual subdivision procedure. It is pursuant to an agreement between the Department and the parties. A lot of the days up until this point have been I guess in a discussion on litigation, so that is sort of the context of this so this is unusual. It is not really exactly fitting within the box of what the typical approvals...you know, so if you have other additional questions we could...if you don't feel comfortable approving it today--

Ms. Apisa: No, no, no. There is no question. We want to approve it. I just don't know how to word the motion to make sure that it encompasses everything so that it's clean.

Ms. Higuchi Sayegusa: Well, it is still on the agenda for approval for tentative subdivision map approval.

Ms. Apisa: Right. So, I mean, I guess referencing this particular parcel--

Mr. Mahoney: Could I interject?

Ms. Apisa: Yes, please.

Mr. Mahoney: How about if you just approve what is on the agenda? The tentative subdivision approval. We understand all of the testimony that has been brought forth. I mean, you can't list every single thing from time and memorial or the (inaudible), but I think going...would that be appropriate? And then if agency comments come in--

Mr. Bukoski: I can interject.

Mr. Mahoney: Yeah.

Mr. Bukoski: From the tentative approval, the conditions that I have from the respective agencies are all very...you know, shall comply with everything, right? With that being said, we can work with the applicant in obtaining those conditions from--

Ms. Higuchi Sayegusa: I'm sorry. Chair, if it's okay, can we ask for a really short recess? Five (5) minutes or so? Just so that...

Mr. Ho: You are going to formulate the wording on–

Ms. Higuchi Sayegusa: Yeah. Just a little bit of time.

Mr. Ho: We will take a 5-minute recess.

Ms. Higuchi Sayegusa: Thank you.

The Committee recessed this portion of the meeting at 9:14 a.m.

The Committee reconvened this portion of the meeting at 9:21 a.m.

Mr. Ho: We are back in session. Commissioners–

Mr. Trask: I'm sorry. For the record, Mauna Kea Trask, County Attorney. In discussion with the Philips', we would propose the motion be to approve tentative subdivision as submitted before you.

Ms. Apisa: Jodi, you are good with that? I would make the motion that we grant tentative approval as presented.

Mr. Mahoney: I'll second the motion.

Mr. Ho: Motion has been made and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0.

Mr. Trask: Mahalo. Thank you all.

Mr. Bukoski: Thank you, Chair.

Subdivision Extension Request

Subdivision Application No. S-2016-19; *Grove Farm Company, LLC*; Proposed 2-lot Subdivision; TMK: (4) 3-3-011:002 & 3-3-018:005; Puhi, Kaua'i

Mr. Bukoski: Moving on to Subdivision Extension Requests, Item a., Subdivision Application No. S-2016-19, Grove Farm Company, LLC, proposed 2-lot subdivision, TMK: (4) 3-3-011:002 and 3-3-018:005, Puhi, Kaua'i.

Mr. Bukoski read the Extension Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my extension report and I will hold off on the recommendation.

Mr. Ho: Would someone from Grove Farm be in the audience?

Ms. Arismendez: Good morning. My name is Maren Arismendez from Esaki Surveying. I am here on behalf of Grove Farm.

Mr. Ho: Commissioners, any questions?

Ms. Apisa: I would like to hear from her.

Mr. Mahoney: So you heard what the Planner had to say and he said that you are working diligently and Water seems to be a problem, but you are doing your due diligence, so I have no problem with this. No further questions from me.

Mr. Ho: I will entertain a motion.

Mr. Mahoney: Chair, I move to approve Subdivision Application No. S-2016-19, Grove Farm Company, LLC, proposed 2-lot subdivision, TMK: (4) 3-3-011:002 and 3-3-018:005 in Puhi.

Ms. Apisa: Second.

Mr. Ho: Motion has been made and seconded. All in favor? (Unanimous voice vote) Motion approved 3:0.

Ms. Arismendez: Thank you.

Subdivision Application No. S-2016-23; *Grove Farm Company, Inc.*; Proposed 3-lot Subdivision; TMK: (4) 3-3-011:005, 007 & 008; Puhi, Kaua'i

Mr. Bukoski: Moving on to Item b., Subdivision Application No. S-2016-23, Grove Farm Company, Inc. proposed 3-lot subdivision, TMK: (4) 3-3-011:005, 007, and 008, Puhi, Kaua'i.

Mr. Bukoski read the Extension Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my extension report and I will hold off on my recommendation as well.

Mr. Ho: Commissioners, any questions? This is for a one-year extension to—

Mr. Bukoski: Correct, Chair.

Mr. Ho: –July 26, 2018?

Mr. Bukoski: Correct.

Mr. Mahoney: Similar, pretty much, to the first one, so I think I am alright with it.

Ms. Apisa: Me, too.

Mr. Ho: I need a motion, please.

Mr. Mahoney: Was there a recommendation, or no?

Mr. Ho: Oh, I'm sorry.

Mr. Bukoski: It is recommended that an extension until July 26, 2018 be granted to obtain final subdivision approval. However, the applicant is made aware that an updated status report on the subdivision with a detailed time chronology on the progress of the tentative approval requirements shall be submitted to the Planning Department for review for further extension requests. The status report shall be submitted to the Planning Department no later than sixty (60) days prior to the expiration date.

Mr. Ho: Commissioners, I need a motion, please.

Mr. Mahoney: I move to approve extension request for Subdivision No. S-2016-23, TMK: (4) 3-3-011:005, 007, and 008.

Ms. Apisa: Second.

Mr. Ho: Motion has been made and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0.

Ms. Arismendez: Thank you.

Mr. Bukoski: Thank you, Chair.

Subdivision Application No. S-2011-19; *Halelea Investment LLC/Patricia Wilcox Sheehan*; Proposed 4-lot Consolidation; TMK: (4) 5-5-010:066, 068, 069, & 081; Hanalei, Kaua'i

Mr. Bukoski: Moving on to our last item on the agenda, Subdivision Application No. S-2011-19, Halelea Investment LLC/Patricia Wilcox Sheehan, proposed 4-lot consolidation, TMK: (4) 5-5-010:066, 068, 069, and 081, Hanalei, Kaua'i.

Mr. Bukoski read the Extension Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my extension report and I will hold off on the recommendation.

Mr. Ho: Is there someone from Halelea?

Lorna Nishimitsu: Good morning. For the record, Lorna Nishimitsu, counsel for Halelea and Ms. Sheehan. I am accompanied by their surveyor, Brian Hennessy, of Honua Engineering. Just a summary, the remaining condition of the six (6) conditions...or if you count them all, nineteen (19) sub-conditions of tentative subdivision approval have been fulfilled. The outstanding one is

getting the final map approved. Before the owner got an extension back in 2014, the pre-final map was submitted by cover letter dated September 27, 2013, and on November 12, 2013, the Planning Commission granted the first requested extension. It seems that after that everything just fell through the cracks. There were no County responses to the pre-final map and after we got the first extension, it (was) kind of like okay, we've done what we needed to do. When this lapse was discovered, the final map was resubmitted in May of this year and what we are waiting for is for the agencies to approve the final map. This is basically a consolidation of four (4) lots. We are not getting any additional density or entitlements from the merging of these four (4) lots. It doesn't seem that it would be unreasonable to request an extension rather than to require the landowners to start at ground zero. I mean, some of the conditions involved doing an archaeological inventory survey, which is rather costly, and that was completed and approved by the State Historic Preservation Division. They went through the Kaua'i Burial Plan process, all of that, so to require them to redo all of the steps that were taken would be quite a big obligation on their part. So for those reasons, we request that this second and final extension be granted, and all we are waiting on is for the agencies to say that the final map is acceptable.

Mr. Ho: Comments, Commissioners?

Mr. Mahoney: Well, if that's...like you say it's in process, that's your final condition that needs to be complied with and you have it in the works?

Ms. Nishimitsu: It went in in May of this year.

Mr. Mahoney: Okay.

Ms. Nishimitsu: Well, a pre-final went in in 2013. The final went in in May of this year because there was no response to the pre-final map.

Mr. Mahoney: Okay.

Ms. Apisa: I am not opposed to it, but I am just curious. The purpose of the consolidation is?

Ms. Nishimitsu: Some of the existing lots of record are very awkwardly shaped and the size is not conducive to reasonable use, so by merging everything together, there is an ability to better use...and it is hard to see. With the consolidation, it will be easier for the landowner to make (inaudible) of that property.

Ms. Apisa: Okay, thank you.

Mr. Ho: Would that be commercial use?

Ms. Nishimitsu: Yes, partly commercial.

Ms. Apisa: The zoning...nothing changes on the zoning?

Ms. Nishimitsu: Nothing changes.

Mr. Ho: Your recommendation, Mr. Bukoski.

Mr. Bukoski: It is recommended that an extension until July 12, 2018 be granted to obtain final subdivision approval. It should be noted that no further extensions will be given due to the amount of time that has past and the opportunities to resolve the few remaining requirements.

Ms. Apisa: I will move to approve the Department's recommendation.

Mr. Mahoney: Second.

Mr. Ho: Motion has been made and seconded. A vote, please.

Ms. Apisa: Aye.

Mr. Mahoney: Aye.

Mr. Ho: Motion carries 3:0.

Ms. Nishimitsu: Thank you.

Brian Hennessy: Thank you.

Mr. Bukoski: Chair, that concludes the rest of the New Business.

ADJOURNMENT

Mr. Ho: So our Subdivision (Committee) is through with our business. I need a motion to close.

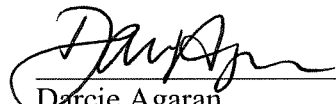
Mr. Mahoney: Chair, move to adjourn.

Ms. Apisa: Second.

Mr. Ho: A motion to adjourn has been made and seconded. All in favor? (Unanimous voice vote) Motion carries 3:0. We are adjourned.

Subdivision Committee Chair Ho adjourned the meeting at 9:37 a.m.

Respectfully submitted by:



Darcie Agaran
Commission Support Clerk

() Approved as circulated (add date of meeting approval).

() Approved as amended. See minutes of _____ meeting.

